

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE TERRORIST ATTACKS ON SEPTEMBER 11, 2001

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) No. 03 MDL 1570 (GBD/FM)
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This document relates to:

FEDERAL INSURANCE CO., *et al.* v. AL QAIDA, *et al.*,
Case No. 03-CV-6978.

**Defendant Dr. Abdul Rahman Al-Swailem’s
Notice of Supplemental Authority
in Support of His Renewed Motion to Dismiss**

Defendant Dr. Abdul Rahman Al-Swailem, through undersigned counsel, provides this Court with supplemental authority in support of his renewed motion to dismiss.

Dr. Al-Swailem’s renewed motion to dismiss explained that the two government agencies that he directed – the Saudi Red Crescent Society (“SRC”) and the Saudi Joint Relief Committee (“SJRC”) were established by the Kingdom of Saudi Arabia, and operate as agencies or instrumentalities of the government. *See* Mot. to Dismiss, Mem., at 2-4 (ECF No. 2774) (Aug. 29, 2013). His renewed motion to dismiss also explained that the Plaintiffs’ allegations as to the SRC and the SJRC specifically pled that both entities were agencies or instrumentalities of the government. *Id.* at 8-9. Similarly, the Second Circuit, in upholding this Court’s dismissal of the SRC and the SJRC, did so because the “parties do not dispute that the SJRC and the SRC qualify as instrumentalities of a foreign sovereign within the meaning of the FSIA.” *In re Terrorist Attacks (Saudi Joint Relief Committee)*, 714 F.3d 109, 114 (2d Cir. 2013).

However, Plaintiffs, in their Opposition to Dr. Al-Swailem’s renewed motion to dismiss, instead argued that the SRC and the SJRC are “entities engaged in activities most commonly performed by private and non-governmental organizations,” so that sovereign immunity for Dr.

Al-Swailem was not warranted. *See* Pls. Opp., at 1 (ECF No. 2784) (Oct. 9, 2013). This was contrary to their prior representations to this Court and the Second Circuit that both entities were agencies or instrumentalities of the Saudi government.

After this Court held oral argument on the motion to dismiss, Plaintiffs submitted a brief to the U.S. Supreme Court, in opposition to the *certiorari* petition submitted by the Kingdom of Saudi Arabia and the Saudi High Commission. *See* Br. in Opp., *Kingdom of Saudi Arabia v. Federal Ins. Co.*, No. 13-1146 (U.S. May 21, 2014) (excerpts attached hereto as Exhibit 1).

Although Dr. Al-Swailem does not agree with the Plaintiffs' unsupported allegations as to the activities of the SRC and the SJRC (and he lacks knowledge as to allegations about other entities mentioned in the Plaintiffs' brief), the Plaintiffs' representations to the U.S. Supreme Court confirm that the SRC and the SJRC are part of the Saudi government:

Plaintiffs' pleadings and record submissions supported the conclusions that each of those "charities" acted as an agent and alter-ego of the Kingdom **Saudi officials similarly affirmed that the Saudi government "sponsors and supervises the Saudi Red Crescent and appoints its directors" and that the SJRC "has always functioned as a political subdivision, agency, or instrumentality of the Kingdom of Saudi Arabia."**

Id. at 5-6 (emphasis added) (citations omitted). These representations are, in fact, consistent with both Dr. Al-Swailem's arguments in his renewed motion to dismiss, and with the Second Circuit's decision upholding this Court's dismissal of the SRC and SJRC.

Therefore, this Court should find that the Plaintiffs' arguments in their Opposition to Dr. Al-Swailem's renewed motion to dismiss that the SRC and SJRC are private entities is contradicted by their representations to the U.S. Supreme Court. The Plaintiffs' Supreme Court brief confirms that Dr. Al-Swailem, as the director of the SRC and the SJRC, is entitled to common law sovereign immunity, warranting dismissal of the complaint as to him.

Respectfully submitted,

/s/ Lynne Bernabei

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DATED: June 9, 2014

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2014, I caused the foregoing Notice of Supplemental Authority to be served electronically on counsel of record by the Court's Electronic Case Filing (ECF) System, pursuant to ¶ 9(a) of Case Management Order No. 2 (ECF No. 247) (June 16, 2004), and this Court's Order (ECF No. 2652) (Jan. 10, 2013).

/s/ Alan R. Kabat

Alan R. Kabat